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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,002	06/15/2001	Dan Shaw	930016-2002	1475

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EXAMINER	
PIERCE, WILLIAM M	

ART UNIT	PAPER NUMBER
3711	

DATE MAILED: 09/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/883,002	Applicant(s) SHAW ET AL.	
	Examiner William M Pierce	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 May 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

WILLIAM M. PIERCE
PRIMARY EXAMINER

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *1* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

Claim Rejections - 35 USC § 112

Claims 4-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"Said means for moving" in claim 4 lacks a clear anteceded since in claim 1 there is a means for moving the basketball goal and in claim 2 there is a means for moving the curtains. Claims 5-7 lack a clear statement of function in that "control lines" and "power lines" lack a proper antecedent. Claims 10-12 are inapt in that they are purely narrative without further limiting the structure of the previously recited elements. Claim 14 is indefinite in that the structure required by a "particular application" unclear. The scope of claim 15 and what is included in "virtual animation" is unclear. In claims 16 and 17, "height adjusters" and "auxiliary gymnasium equipment" is unclear and lacking proper antecedent basis or alternatively one cannot determine whether these are being claimed in combination.

Claim Rejections - 35 USC § 103

I. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

II. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berman in view of Kesling and further in view of matters considered old and well known.

Basketball arena having goals of adjustable height and curtains for division between a plurality of courts is admitted prior art by applicant (pg. 1, ln. 5 of spec.). Berman is an example of such prior art. Not shown are control means for moving the apparatus in the arena. Automating a manual activity has been held to be obvious and not considered a patentable advance. See In re Venner , 262 F.2d 91, 120 USPQ 193, 194 (CCPA 1958) (Appellant argued that claims to a permanent mold casting apparatus for molding trunk pistons were allowable over the prior art because the claimed invention combined "old permanent - mold structures together with a timer and solenoid which

automatically actuates the known pressure valve system to release the inner core after a predetermined time has elapsed." The court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art.). Further called for are relays for a first voltage and a second voltage. Having a control system that operates at a first lower 12 volt DC voltage control devices that operate at a second higher 110 voltage is known as taught by Kesling. To have used a 12 volt control system in Berman would have been obvious in order to save power and provide safety.

It is known in the art automating a device to centrally locate all the automation controls. In coming to such a conclusion, the examiner observes that an artisan must be presumed to know something about the art apart form what the references disclose (see In re Jacoby, 309 F.2d, 513, 516, 135 USPQ 317, 319 (CCPA 1962) and the conclusion of obviousness may be made form "common knowledge and common sense" of the person of ordinary skill in the art (see In re Bozek, 416, F. 2d, 1385, 163 USPQ 545, 549 (CCPA 1969). Automation controls for performing such activities are readily available and it would be common sense to have a central control as is further taught by Kesling. There is no evidence that applicant's invention has done nothing more than automate a previously manual activity. No evidence has been submitted to show that anything unexpected has been accomplished and/or any particular problem has been solved such as improved basketball performance, greater profits for the sports arena, greater safety and etc. Secondly, the scope of the language of Venner states that automation "which accomplished the same result is not sufficient to distinguish over the prior art." The examiner submits that applicant's invention accomplishes the same results of raising and lowering goals and opening and closing curtains whether done manually or automatically. Hence, examiner cannot agree with the position of applicant and the rejection stands as set forth above.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hermann and Warren show control systems.

Any inquiry concerning this communication and its merits should be directed to William Pierce at E-mail

address bill.pierce@USPTO.gov or at telephone number (703) 308-3551.

Any inquiry not concerning the merits of the case such as **missing papers, c pies, status r inf rmation** should be directed to Tech Center 3700 Customer Service Center at (703) 306-5648 where the fax number is (703) 308-7957 and the email is Customerservice3700@uspto.gov.

For **official fax** communications to be officially entered in the application the fax number is (703) 305-3579.

For **informal fax** communications the fax number is (703) 308-7769.

Any inquiry of a general nature or relating to the **status** of this application or proceeding can also be directed to the receptionist whose telephone number is (703) 308-1148.

Any inquiry concerning the **drawings** should be directed to the Drafting Division whose telephone number is (703) 305-8335.